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**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

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UTAH CHAPTER OF THE SIERRA CLUB,  
SOUTHERN UTAH WILDERNESS  
ALLIANCE, NATURAL RESOURCES  
DEFENSE COUNCIL, and NATIONAL  
PARKS CONSERVATION ASSOCIATION,

Petitioners,

DIVISION OF OIL, GAS AND MINING  
and  
ALTON COAL DEVELOPMENT, LLC

Respondents,

Kane County, Utah,

Respondent-Intervenors.

ORDER DENYING MOTION  
FOR TEMPORARY RELIEF

Docket No. 2009-019  
Cause No. C/025/0005

**FILED**

NOV 30 2010

SECRETARY, BOARD OF  
OIL, GAS & MINING

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The parties filed the following briefs concerning the Petitioners' motion for temporary relief:

- Petitioners' Application for Temporary Relief ("Petitioners' Motion"), filed on November 15, 2010;
- Respondent Alton Coal Development, LLC's Memorandum in Opposition to Petitioners' Application for Temporary Relief, filed on November 19, 2010;
- Division's Response to Petitioners' Application for Temporary Relief, filed on November 19, 2010;
- Joinder of Kane County, Utah in Respondent Alton Coal Development, LLC's Memorandum in Opposition to Petitioners' Application for Temporary Relief, filed November

19, 2010; and

- Petitioners' Reply Memorandum In Support of Their Application For Temporary Relief, filed on November 22, 2010.

**NOW THEREFORE**, the Board, having considered the above-listed briefs, and good cause appearing, hereby sets forth its ruling on the Petitioners' motion.

Petitioners' Motion seeks temporary relief from the decision of the Utah Division of Oil, Gas and Mining ("Division") approving the application of Alton Coal Development, LLC ("ACD") for a permit to conduct surface coal mining and reclamation operations in the area known as "Coal Hollow," south of the town of Alton in Kane County, Utah. The Division's action in granting this permit is the decision under appeal to this Board in the above-captioned matter.

In moving for temporary relief, Petitioners have cited both Utah Admin Code R645-300-212.200 to -212.240 (pertaining to temporary relief from the Division's decision pending administrative review before this Board), as well as Utah Code Ann. §63G-4-405 (pertaining to temporary relief from the Board's final order pending judicial review). Because this Board has issued its final order in this matter, the Petitioners' request for relief under Utah Admin. Code R645-300-212.200 is now moot. Given that the Board's final order was issued during the briefing on Petitioners' Motion, Petitioners asked in their reply brief that the Board treat their motion as one for relief from the Board's final order pursuant to Utah Code Ann. §63G-4-405. Reply Brief at 3.

Utah Code Ann. §63G-4-405(1) provides that "the agency may grant a stay of its order or other temporary remedy during the pendency of judicial review, according to the agency's rules." The only applicable rule is Utah Admin. Code R645-300-212.200, discussed above. The

standards set forth in that rule therefore control Petitioners' request for relief under Utah Code Ann. §63G-4-405. The rule provides that temporary relief may be granted if:

(a) all parties have been notified and have been given an opportunity to be heard on the request;

(b) the party requesting relief shows there is a "substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;"

(c) the relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) the relief sought is not the issuance of a permit where a permit has been denied.

Utah Admin Code R645-300-212.200 to -212.240. The second requirement (that the moving party demonstrate a "substantial likelihood that he or she will prevail on the merits") was the focus of most of the argument in the briefing. The Division, ACD and Kane County each argue that the Board, having conducted its hearing, heard the evidence, heard closing argument and issued its ruling that Petitioners have not prevailed on any of their claims, cannot now make the required finding concerning the Petitioners' likelihood of prevailing upon the merits of those same claims. Petitioners themselves have conceded that upon entry of a final order denying all of Petitioners' claims (which has now been issued), "the Board will in fact lack a basis on which to find that there is a substantial likelihood that Petitioners will prevail on the merits of their appeal." Reply Brief at 11.

The Board agrees that the "substantial likelihood" of prevailing on the merits element is dispositive. The Board has conducted its hearing, taken argument and issued its ruling holding

that Petitioners have not prevailed upon the merits of any of the subject claims. For the reasons set forth in its prior orders including its Findings of Fact, Conclusions of Law and Final Order, the Board finds that Petitioners have not demonstrated a substantial likelihood of prevailing upon the merits of those same claims on appeal. Because this showing is necessary for the Board to grant any temporary relief, the Board denies Petitioners' Request for Temporary Relief without reaching the parties' arguments concerning the remaining elements set forth in Utah Admin. Code R645-300-212.200 to -212.240.

The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

ISSUED this 30th day of November, 2010.

Utah Board of Oil, Gas & Mining

A handwritten signature in cursive script, appearing to read "Douglas E. Johnson", written in dark ink.

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Douglas E. Johnson, Chairman

## CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Order to be mailed  
by first class mail, postage prepaid, the 1st day of December, 2010, to:

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